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Written statement* submitted by the World Evangelical Alliance, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 August 2018]

* Issued as received, in the language(s) of submission only.

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Sri Lanka: Persistence of Religiously Motivated Violence, Intimidation, and Discrimination

1. Sri Lanka laws and provisions guarantee the freedom of religion or belief and protect citizens from discrimination based on religious belief. However, religiously motivated violence, intimidation, and discrimination continue to persist and deepen fault-lines between already divided communities.

Recent Trends in the Religious Freedom Landscape

2. Since 2015, the National Christian Evangelical Alliance of Sri Lanka (NCEASL) has documented 320 violations against Christian minorities; out of which 137 involved State actors (43%), either explicitly or implicitly. 2017 in particular saw a spike in the number of violent incidents, with 17 out of the 96 incidents recorded being categorised as violent (including both physical violence and property damage). In 2018, on the other hand, 32 of the 45 incidents recorded included incidents of threats, intimidation or coercion.

3. Furthermore, over 165 incidents of violence, intimidation, and discrimination have been recorded in relation to Sri Lanka's Muslim community. 2017 and 2018 saw systematic hate campaigns targeting Muslim communities which resulted in sporadic incidents of violence.

4. The most recent such incidents occurred in February and March of this year when hardline Sinhala-Buddhist mobs carried out a wave of violent attacks against Muslim-owned businesses, homes, and mosques across the Ampara and Kandy districts. The violence in Kandy was particular widespread and intense, lasting almost a week and resulting in the government declaring a State of Emergency and a social media black-out. The attacks were orchestrated by ultra-nationalist group Mahason Balakaya, with the scale of violence attributed to the complicit behaviour of law enforcement officials on the ground and the impunity enjoyed by the perpetrators. Additionally, eye witnesses accounts state that members of the Special Task Force (STF) engaged in physical attacks against victims. According to information received at the site from a single source 49 businesses, 132 houses, 04 mosques, and 18 vehicles were damaged or destroyed, along with 51 injuries and 3 deaths reported.

5. Subsequently, several perpetrators including the leader of Mahason Balakaya were taken into custody under Emergency Regulations. However, developments in case proceedings are unknown, with the most recent update in May 2018 simply stating the accused were further remanded.

6. In 2018, Hindus in Jaffna protested the on-going attacks on Hindu temples and shrines in the Northern and Eastern provinces. Attacks have been reported against historic temples such as the Irrandam Kattai Pillayar temple, Murusumottai Settrukandi Muththumari Amman temple and Murasumottai Subramaniyar temple. Statues were also reported to have been destroyed in the Killinochchi and Vanni areas.

Issues Relating to the Registration of Religious Places of Worship

7. Sri Lankan law does not require the registration of places of worship or religious bodies with the State. In October 2008, the Ministry of Religious Affairs and Moral Upliftment issued a circular requesting all future construction of any place of worship as subject to prior permission of the Ministry. The Ministry instructed Provincial Councils and Divisional Secretariats to comply with this requirement and seek prior approval from the Ministry before approving applications for construction of places of worship. The procedure prescribed by this Circular itself is inconsistent with principles of equality, non-discrimination and justice in that it exempts "traditional religions" from submitting documentary evidence required by the Ministry to prove their bona-fide but fails to specify what "traditional religions" are. Ministry and local government officials make decisions to grant or deny permission based on their own understanding or biases.

8. While Roman Catholic churches, and Protestant Christian churches holding membership with the National Christian Council are recognized by the state, Evangelical Christian churches, prayer meetings and religious worship activities are routinely denied permission to function, due to the misapplication of this Circular.

9. Since this Circular has no founding in parliamentary legislature, it has no legal validity. Furthermore, local government authorities and law enforcement officials continue to utilize the 2008 Circular to curtail the rights of religious minorities and subject them to harassment. Since 2015, 57 Protestant Christian churches have been instructed to obtain registration.

10. In 2017, the NCEASL submitted two requests for information to the Ministry of Buddha Sasana and the Department of Christian Affairs, utilizing the Right to Information procedure. The responses received definitively stated that the Circular in question is only applicable to Buddhist places of worship and is no longer applicable to other religious groups. However, government and law enforcement authorities continue referencing the Circular despite being made aware of these developments.

Judicial Bias in Litigation Relating to Religious Freedom

11. The judiciary has been increasingly biased when adjudicating matters concerning religious freedom and the rights of religious minorities.

12. In 2016, a Fundamental Rights case numbered SCFR 92/2016 was filed in the Supreme Court of Sri Lanka, on the basis that the freedom of religion and the right to equality had been infringed. As per the facts of the case, an application was made for a development plan to construct a two-storeyed school building. A development permit to construct a two-storeyed building for a school was subsequently issued.

13. However, the school was prohibited from continuing with the construction on the grounds that (1) what was in fact being built was a Mosque, for which permission had not been obtained, (2) a breach of peace should be avoided as there were protests from the residents in the area and from Buddhist Monks and (3) as per the 2008 Circular, approval of the Ministry of Religious Affairs should be obtained to construct the proposed Dhamma School. All three grounds were accepted by the judges of the Supreme Court, who on this basis held that religious freedom and the right to equality as provided for in the Fundamental Rights chapter of the Constitution have not been infringed. Further, the judges of the Supreme Court stated that the 2008 Circular had to be complied with, as it fell within the definition of law.

14. On 18th July 2018 the Supreme Court delivered a determination concerning a petition filed in 2014 numbered SCFR 241/2014, wherein two Jehovah's Witnesses were arrested on the grounds of criminal trespass while engaging in house-to-house visits. The judges of the Supreme Court found that there were no "reasonable grounds for suspecting" the petitioners had committed the offense of criminal trespass and that the petitioners were "unnecessarily, unreasonably, and unlawfully detained overnight". They, therefore, held that the petitioners' fundamental rights as guaranteed under Articles 12(1) and 13(1) had indeed been violated.

15. However, the judges of the Supreme Court further went on to conclude that the petitioners' rights under Article 14(1)(e) had not been violated since the right to 'propagate' one's religion is not explicitly protected by the Sri Lankan Constitution and went on to stress that "the citizens of this country do not possess a constitutionally protected freedom to propagate their religion or belief".

16. Based on recent trends it is apparent that the Supreme Court tends to use a procedural approach when determining outcomes that protect minority religious rights. This approach fails to substantively contribute to the expansion of jurisprudence on the State's role to protect, promote and fulfil an individual's freedom of religion.

17. In cases concerning Evangelical Christians in particular, judges of the lower courts have been known to compel victims of religious freedom violations to settle the matter at hand, refraining from issuing judgement or orders which hold that such a violation has occurred

Recommendations

18. Ensure judicial accountability for violators of religious freedom and instigators of religiously motivated violence.

19. Implement judicial reforms via the Judicial Services Commission and sensitize members of the judiciary to FoRB considerations when delivering judgements.

20. Develop and implement effective early-warning systems which flag potential hot-beds of communal tension to prevent or mitigate communal violence.

21. Sensitize all security personnel and members of law enforcement to human rights considerations, particularly in their interventions during civil unrest.

22. The Ministry of Buddha Sasana should withdraw the Circular issued in September 2008 pertaining to the construction of new places of worship and issue instructions to Ministries, local government bodies, law enforcement and all relevant authorities.

23. Develop appropriate curricular for primary, secondary, and tertiary levels of education that promote religious harmony and tolerance.

24. Take concrete action against perpetrators of hate speech and those who incite violent attacks against religious minorities and take steps to prevent reoccurrence.

25. The government should take steps to ensure that the Inter-Religious Council established by the President is inclusive of and adequately represents all religious groups, including Evangelical Christians who have been excluded from the Council and strengthen efforts to promote inter-religious dialogue.

26. Establish a national commission for minorities with the purview of addressing claims of violations against minorities.

27. National Christian Evangelical Alliance of Sri Lanka, NGO without consultative status, also shares the views expressed in this statement.